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 C&H SUGAR COMPANY, INC.

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

SUGAR WORKERS UNION LOCAL NO. 1,)	Case No. C 07-2738 EMC
)	
Plaintiff,)	DEFENDANT C&H SUGAR
)	COMPANY, INC.'S ANSWER TO
v.)	PETITION TO COMPEL
)	ARBITRATION
C&H SUGAR COMPANY, INC.,)	
)	
Defendant.)	

Defendant C&H Sugar Company, Inc. ("C&H" or "Defendant") hereby responds to Plaintiff Sugar Workers Union, Local No. 1's ("Union" or "Plaintiff") Petition to Compel Arbitration ("Petition"). Any allegation of the Petition not specifically admitted herein is denied.

PARTIES AND JURISDICTION

1. Defendant admits that Plaintiff is a labor organization as defined under 29 U.S.C.A. § 152(5) of the National Labor Relations Act. Defendant admits that Plaintiff exists in part for the purpose of providing standards of wages, hours, and working conditions, and negotiating and executing collective bargaining agreements on behalf of employees in an appropriate collective bargaining suit. Except as specifically admitted to herein, Defendant denies each and every remaining allegation set forth in Paragraph 1 of the Petition.

2. Defendant admits that it is a corporation in an industry affecting commerce within the meaning of § 301 of the Labor Management Relations Act. Defendant avers that it is a Delaware Corporation, with a facility in Crockett, California and is engaged in the business of

1 refining sugar. Defendant admits that it employs members of the Union. Except as specifically
 2 admitted and/or averred to herein, Defendant denies each and every remaining allegation set
 3 forth in Paragraph 2 of the Petition.

4 3. Defendant admits that it was a party to a written Collective Bargaining Agreement
 5 (“CBA”) between the Union and Defendant. Defendant also admits that the CBA includes a
 6 multi-step Grievance Procedure. Defendant admits that a copy of the CBA, which expired on
 7 June 30, 2006, is attached as Exhibit A to the Declaration of Will M. Yamada. Defendant denies
 8 that the terms of Exhibit A are in “full force and effect,” as they expired on June 30, 2006.
 9 Accordingly, Plaintiff has failed to allege the existence of a currently applicable contract.
 10 Defendant admits that the parties’ negotiated concerning a subsequent CBA, scheduled to expire
 11 on June 30, 2009, but avers that Plaintiff has declined to execute this CBA. Defendant admits
 12 that modifications to the expired contract agreed to between Defendant and Plaintiff are attached
 13 as Exhibit A to the Declaration of Will M. Yamada. Except as specifically admitted and/or
 14 averred to herein, Defendant denies each and every remaining allegation set forth in Paragraph 3
 15 of the Petition.

16 GENERAL ALLEGATIONS

17 4. Defendant has insufficient information to admit or deny the allegations in
 18 Paragraph 4 of the Petition, and on that basis denies them. However, Defendant avers that Tim
 19 Shelton (“Shelton”) was terminated on October 10, 2006 for being a “no call, no show” on
 20 October 2, 3, 4, 5, and 6, 2006. Defendant denies the statements in former Union President, Jens
 21 Aagaard’s (“Aagaard”) declaration attached as Exhibit B to the Declaration of Will M. Yamada.
 22 Except as specifically admitted and/or averred to herein, Defendant denies each and every
 23 remaining allegation set forth in Paragraph 4 of the Petition.

24 5. Defendant denies that Aagaard grieved the termination of Shelton to any of
 25 Shelton’s Supervisors or any other employee of C&H. Defendant further denies that a
 26 “grievance meeting” was held between Aagaard, Shelton, Union Business Agent Lawrence Ross
 27 (“Ross”), and Defendant’s Human Resources Manager Kyle Stradleigh (“Stradleigh”) regarding
 28 Shelton’s termination. Defendant further denies that Ross and Aagaard asked that Shelton be

1 reinstated and that the Union presented evidence to support this request. Defendant also denies
2 that Plaintiff submitted a written grievance and that Stradleigh told Shelton, Ross and Aagaard
3 he would take any information under consideration. Conversely, Defendant avers that in mid-to-
4 late October an investigation meeting was held, at which Aagaard orally informed Stradleigh that
5 the Union would not be pursuing a grievance on behalf of Shelton. Defendant denies the
6 statements in Ross's declaration attached as Exhibit C to the Declaration of Will M. Yamada.
7 Except as specifically admitted and/or averred to herein, Defendant denies each and every
8 remaining allegation set forth in Paragraph 5 of the Petition.

9 6. As to the Union's first allegation in Paragraph 6 of the Petition, Defendant has
10 insufficient information to admit or deny the allegation, and on that basis denies it. Defendant
11 avers, however, that in late October 2006, Frank Wright ("Wright") violated C&H's anti-
12 harassment and anti-violence policies. Specifically, witnesses observed him making
13 inappropriate and crude racial slurs towards his East Indian co-worker, threatening (among other
14 things) to "kick [his] ass," giving him the "finger" and, while exiting C&H property, jumping out
15 of his vehicle and demanding the co-worker engage in fisticuffs. As to Plaintiff's second
16 allegation, Defendant denies that a "grievance meeting" was held on October 23, 2006, regarding
17 Wright's alleged "indefinite suspension." Defendant avers that no grievance meeting has ever
18 been held regarding Wright. Except as specifically admitted and/or averred to herein, Defendant
19 denies each and every remaining allegation set forth in Paragraph 6 of the Petition.

20 7. Defendant has insufficient information to admit or deny the allegation in
21 Paragraph 7 of the Petition, and on that basis denies it. Defendant avers, however, that Wright
22 was terminated for violating C&H's anti-harassment and anti-violence policies on October 31,
23 2006. Except as specifically averred to herein, Defendant denies each and every remaining
24 allegation set forth in Paragraph 7 of the Petition.

25 8. Defendant denies that Plaintiff filed a written grievance following Wright's
26 termination. Conversely, Defendant avers that in early November 2006, Aagaard informed
27 Stradleigh that the Union would not grieve Wright's termination. Except as specifically averred
28

1 to herein, Defendant denies each and every remaining allegation set forth in Paragraph 8 of the
2 Petition.

3 9. Defendant denies that between November 1, 2006 and December 14, 2006
4 Plaintiff asked for a copy of either Wright or Shelton's personnel files. Defendant also denies
5 the remaining allegations in Paragraph 9 of the Petition.

6 10. Defendant admits that it received correspondence on December 15, 2006, dated
7 December 14, 2006, referencing the personnel files of Wright and Shelton. Defendant denies
8 that any earlier written correspondence regarding said files occurred. Defendant avers that, as of
9 December 15, 2007, it had not received written grievances for the termination of Wright or
10 Shelton. Except as specifically admitted and/or averred to herein, Defendant denies each and
11 every remaining allegation set forth in Paragraph 10 of the Petition.

12 11. Defendant admits C&H Human Resources Manager Kyle Stradleigh wrote to
13 Plaintiff on December 18, 2006, informing Plaintiff that Defendant had never received
14 grievances filed on behalf of Wright or Shelton. Defendant denies Stradleigh's letter was
15 disingenuous and denies that the letter contradicted any purported previous discussions between
16 Plaintiff and Stradleigh regarding Wright and Shelton's termination. Conversely, Defendant
17 avers no grievances regarding the termination of Wright or Shelton were submitted to C&H until
18 January 2, 2007, and that those grievances were fraudulently back-dated and submitted. Except
19 as specifically admitted and/or averred to herein, Defendant denies each and every remaining
20 allegation set forth in Paragraph 11 of the Petition

21 12. Defendant admits that it received a letter from Plaintiff on January 2, 2007, dated
22 December 21, 2006, regarding Wright and Shelton, referencing their termination and personnel
23 files. Defendant avers C&H received Plaintiff's allegedly-filed grievances for the first time on
24 January 2, 2007. Defendant avers that these grievances, purportedly authored by Aagaard, are
25 unsigned. Defendant further avers that Aagaard has stated that he did not write, authorize, or
26 submit either grievance at the dates set forth therein, or at any subsequent time. Defendant avers
27 that Aagaard has also stated that, while acting as Union President, he informed Stradleigh that
28 the Union would not grieve the discharge of Shelton or Wright. Consequently, Defendant avers

1 that the allegedly-filed grievances were not authored by Aagaard and were fraudulently back-
2 dated to avoid being dismissed as untimely. Except as specifically admitted and/or averred to
3 herein, Defendant denies each and every remaining allegation set forth in Paragraph 12 of the
4 Petition

5 13. Defendant admits that Plaintiff filed an Unfair Labor Practice Charge with the
6 National Labor Relations Board regarding Plaintiff's request for the personnel files of Sarah
7 Orullian, Shelton and Wright. Defendant denies that the Charge was brought on January 2,
8 2007, and avers that it was brought on January 4, 2007. Defendant further avers that on January
9 4, 2007, Defendant informed Plaintiff that its grievances regarding the termination of Wright and
10 Shelton were untimely. Except as specifically admitted and/or averred to herein, Defendant
11 denies each and every remaining allegation set forth in Paragraph 13 of the Petition.

12 14. Defendant admits that on January 31, 2007, Defendant provided Plaintiff with a
13 complete copy of both Wright and Shelton's personnel files. Except as specifically admitted to
14 herein, Defendant denies each and every remaining allegation set forth in Paragraph 14 of the
15 Petition.

16 15. Defendant admits that on February 15, 2007, Plaintiff corresponded with
17 Defendant regarding the completeness of Wright and Shelton's personnel files. Defendant also
18 admits that Plaintiff requested "a complete copy of the investigation conducted leading to the
19 termination of Wright." Defendant avers, however, that it had already provided Plaintiff with
20 complete copies of Shelton and Wright's personnel files. Except as specifically admitted and/or
21 averred to herein, Defendant denies each and every remaining allegation set forth in Paragraph
22 15 of the Petition.

23 16. Defendant admits that on February 23, 2007, Defendant responded to Plaintiff's
24 February 15, 2007 correspondence, and informed Plaintiff the Wright and Shelton personnel files
25 were complete. Defendant avers that it informed Plaintiff that C&H would not release its
26 "confidential internal investigation file" regarding Wright, and reiterated that any grievances
27 regarding Wright or Shelton's discharge were untimely. Except as specifically admitted and/or
28

1 averred to herein, Defendant denies each and every remaining allegation set forth in Paragraph
2 16 of the Petition.

3 17. Defendant admits that on February 28, 2007, Plaintiff corresponded with
4 Defendant and demanded arbitration "for Franklin Wright Jr. and all wages lost thereof."
5 Defendant denies that Plaintiff's February 28, 2007 correspondence references the resolution of
6 the "grievance at the prior steps." Except as specifically admitted and/or averred to herein,
7 Defendant denies each and every remaining allegation set forth in Paragraph 17 of the Petition

8 18. Defendant admits that on March 1, 2007, it sent a letter to Plaintiff stating the
9 "recent demand for arbitration, dated February 28, 2007 is untimely," and that Defendant was
10 thus, "unable to recognize [Plaintiff's] demand for arbitration." Defendant avers that it further
11 reiterated that Plaintiff's grievance was untimely. Except as specifically admitted and/or averred
12 to herein, Defendant denies each and every remaining allegation set forth in Paragraph 18 of the
13 Petition.

14 19. Defendant admits in part that a dispute exists between Plaintiff and Defendant
15 regarding the "interpretation and/or application of the collective bargaining agreement."
16 Defendant, however, denies that there are grievances pending for Wright and Shelton, and
17 further denies that these grievances have been pending since October 9, 2006. Defendant avers
18 that it first received grievances for the termination of Wright and Shelton on January 2, 2007.
19 Therefore, no dispute exists because these grievances were untimely and, thus, invalid under the
20 CBA. Except as specifically admitted and/or averred to herein, Defendant denies each and every
21 remaining allegation set forth in Paragraph 19 of the Petition.

22 20. Defendant admits that Section XX of the CBA attached as Exhibit A to the
23 Declaration of Will M. Yamada includes a multi-step Grievance Procedure, but denies that it has
24 an obligation under the CBA to submit "all disputes" to an arbitrator. Defendant avers that
25 Plaintiff's grievances were untimely, fraudulently submitted, and invalid. Except as specifically
26 admitted and/or averred to herein, Defendant denies each and every remaining allegation set
27 forth in Paragraph 20 of the Petition.
28

21. Defendant denies that Plaintiff has sought arbitration since October 10, 2006, and avers that Plaintiff did not submit the subject grievances to Defendant until January 2, 2007. Defendant admits that it has refused arbitration, but denies that it has an obligation under the CBA to arbitrate the instant dispute, because Plaintiff's grievances were untimely, fraudulently submitted, and invalid. Except as specifically admitted to herein, Defendant denies each and every remaining allegation set forth in Paragraph 21 of the Petition.

22. Defendant denies that Plaintiff has complied with the CBA, and avers that the grievances of Wright and Shelton are both fraudulent and untimely. Except as specifically averred to herein, Defendant denies each and every remaining allegation set forth in Paragraph 22 of the Petition

RESPONSE TO PLAINTIFF'S PRAYERS FOR RELIEF

1. Defendant denies that Plaintiff should be awarded the relief sought in its Prayer for Relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Petition fails to state a claim upon which relief sought herein can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff, by its conduct, is estopped from compelling arbitration of untimely grievances.

THIRD AFFIRMATIVE DEFENSE

To the extent Plaintiff makes allegations or claims that were not made the subject of a timely grievance filed by Plaintiff as required by the CBA, any arbitrator would lack jurisdiction with respect to any such allegations or claims.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's allegations are barred to the extent Plaintiff waived its rights to recover, if any.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's allegations are barred to the extent Plaintiff is guilty of unclean hands in connection with the allegations set forth in the Petition.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred to the extent there was any fraud regarding the alleged submission of the purported grievances for Shelton and Wright.

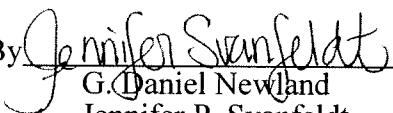
PRAYER FOR RELIEF

NOW THEREFORE, Defendant hereby respectfully requests the following relief:

1. That this Court deny Plaintiff's claims and dismiss its Petition with prejudice;
2. That Defendant be awarded its reasonable attorneys fees and costs incurred by Plaintiff's frivolous and fraudulent pursuit of this Petition, despite Defendant's request for dismissal; and
3. That Defendant be awarded such other and further relief as the Court deems just and proper.

DATED: June 1, 2007

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By 
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